

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
BellSouth Open Network Architecture Plan	)	
Amendment	)	CC Docket No. 88-2
	)	
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**MEMORANDUM OPINION AND ORDER**

**Adopted: July 30, 2003**

**Released: July 30, 2003**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION AND BACKGROUND**

1. This *Memorandum Opinion and Order* addresses an amendment filed by BellSouth Corporation on behalf of BellSouth Telecommunications, Inc. (BellSouth) to its regional Open Network Architecture (ONA) plan, which would remove from that plan several ONA-related services offered in BellSouth's nine-state region.<sup>1</sup> A previous *Memorandum Opinion and Order*, released March 21, 2003, granted BellSouth's amendment in part, permitting BellSouth to withdraw three of the requested services from its ONA plan.<sup>2</sup> This *Memorandum Opinion and Order* grants permission for BellSouth to amend its ONA plan to the extent it withdraws a fourth

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<sup>1</sup> *Filing and Review of Open Network Architecture Plans, BellSouth Open Network Architecture Plan Amendment*, CC Docket No. 88-2 (filed Oct. 31, 2002) (BellSouth's ONA Plan Amendment).

<sup>2</sup> *BellSouth Open Network Architecture Plan Amendment*, Memorandum Opinion and Order (*First Memorandum Opinion and Order*), 18 FCC Rcd. 5092 (2003). The *First Memorandum Opinion and Order* granted BellSouth permission to withdraw "DataReach," "ISDN Single Number Routing Option," and "Uniform Access Numbers for Business Lines," and waived the Commission's rules to permit BellSouth to withdraw these services without filing an application pursuant to section 63.71 of the Commission's rules, 47 C.F.R. § 63.71. *First Memorandum Opinion and Order*, 18 FCC Rcd at 5096, para. 7, n.23. This waiver did not extend to three other services, "ZipConnect," "Calling Directory Number Delivery via Bulk Calling Line Identification Detail," or "Derived Data Channel Service."

service, ZipConnect, in Florida.<sup>3</sup> We will address in a subsequent order BellSouth's request for permission to amend its ONA plan to withdraw ZipConnect in other states and to withdraw two remaining services, Calling Directory Number Delivery via Bulk Calling Line Identification Detail and Derived Data Channel Service.

2. In the Computer III<sup>4</sup> and ONA<sup>5</sup> proceedings, the Commission established a comprehensive regulatory framework – including requirements to maintain ONA and Comparatively Efficient Interconnection plans – to govern participation by Bell Operating Companies (BOCs) in the enhanced services marketplace.<sup>6</sup> The Commission required each BOC to file a plan describing the unbundled basic services it would provide as ONA services and the

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<sup>3</sup> On May 13, 2003, BellSouth filed a section 63.71 application regarding ZipConnect in Florida, but has not filed such an application for ZipConnect in other states in its footprint, nor for its other ONA services, Calling Directory Number Delivery via Bulk Calling Line Identification Detail and Derived Data Channel Service. *Section 63.71 Application of BellSouth Telecommunications, Inc. for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Discontinue the Provision of Service*, Comp. Pol. File No. 650 (filed May 13, 2003) (*BellSouth Application for Section 214 Discontinuance*). See *Comments Invited on BellSouth Telecommunications, Inc. Application to Discontinue Domestic Telecommunications Services*, Comp. Pol. File No. 650, Public Notice, DA 03-1874 (rel. May 30, 2003). We received no comments, and BellSouth's section 63.71 application was granted, by automatic operation of the Commission's rules, on July 29, 2003.

<sup>4</sup> *Amendment of Sections 64.702 of the Commission's Rules and Regulations (Computer III)*, Report and Order, Phase I, 104 FCC 2d 958 (1986) (*Phase I Order*), recon., 2 FCC Rcd 3035 (1997) (*Phase I Recon. Order*), further recon., 3 FCC Rcd 1135 (1988) (*Phase I Further Recon. Order*), second further recon., 4 FCC Rcd 5927 (1989) (*Phase I Second Further Recon.*), *Phase I Order* and *Phase I Recon. Order* vacated, *California v. FCC*, 905 F.2d 1217 (9<sup>th</sup> Cir. 1990) (*California I*); Phase II, 2 FCC Rcd 3072 (1987) (*Phase II Order*), recon. 3 FCC Rcd 1150 (1988) (*Phase II Recon. Order*), further recon., 4 FCC Rcd 5927 (1989) (*Phase II Further Recon. Order*), *Phase II Order* vacated, *California I*, 905 F.2d 1217 (9<sup>th</sup> Cir. 1990); *Computer III Remand Proceedings*, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), recon., 7 FCC Rcd 909 (1992), pets. for review denied, *California v. FCC*, 4 F.3d 1505 (9<sup>th</sup> Cir. 1993) (*California II*); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*), recon. dismissed in part, Order, 11 FCC Rcd 12513 (1996), *BOC Safeguards Order* vacated in part and remanded, *California v. FCC*, 39 F.3d 919 (9<sup>th</sup> Cir. 1994) (*California III*), cert. denied, 115 S.Ct. 1427 (1995); Further Notice of Proposed Rulemaking, 13 FCC Rcd 6040 (1998) (*FNPRM*).

<sup>5</sup> *Filing and Review of Open Network Architecture Plans*, 4 FCC Rcd 1 (1988) (*BOC ONA Order*), recon., 5 FCC Rcd 3084 (1990) (*BOC ONA Recon. Order*); 5 FCC Rcd 3103 (1990) (*BOC ONA Amendment Order*), erratum, 5 FCC Rcd 4045 (1990), pets. for review denied, *California II*, 4 F.3d 1505 (9<sup>th</sup> Cir. 1993), recon., 8 FCC Rcd 97 (1993) (*BOC ONA Amendment Recon. Order*); 6 FCC Rcd 7646 (1991) (*BOC ONA Further Amendment Order*); 8 FCC Rcd 2606 (1993) (*BOC ONA Second Further Amendment*), pet. for review denied, *California II*, 4 F.3d 1505 (9<sup>th</sup> Cir. 1993); *FNPRM*, 13 FCC Rcd 6040 (1998).

<sup>6</sup> See *BOC ONA Amendment Recon. Order*, 6 FCC Rcd 7646 (1991). ONA requirements also govern GTE. See *Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation*, Memorandum Opinion and Order, 11 FCC Rcd 1388 (1995).

terms under which each service would be offered.<sup>7</sup> In order to modify approved ONA-related services, the Commission also required each BOC to first seek the approval of the Common Carrier Bureau (now Wireline Competition Bureau) by filing an amendment to its ONA plan at least 90 days in advance.<sup>8</sup>

3. On October 31, 2002, BellSouth filed to amend its ONA plan to eliminate several identified ONA-related services, including ZipConnect.<sup>9</sup> The Commission sought comment on BellSouth's amendment,<sup>10</sup> and received none. BellSouth has indicated that it can no longer provide its ZipConnect service in Florida because ZipConnect relies on "oddball" NXX code 203, which BellSouth must return to the North American Numbering Plan Administrator (NANPA) by July 31, 2003, and which BellSouth therefore may no longer use in Florida.<sup>11</sup> Generally, NXX codes are unique to a single rate center within an area code, but certain "oddball" NXX codes are not unique to a particular rate center and are used throughout an area code.<sup>12</sup> When an area code split occurs (*e.g.*, due to a number shortage), "oddball" NXX codes also must be duplicated so that customers who are moved to the new area code may continue to receive the services associated with these NXX codes.<sup>13</sup> Accordingly, in early 2001, in connection with area code splits in Florida, BellSouth sought permission from NANPA to

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<sup>7</sup> See *Bell Atlantic Telephone Companies, Offer of Comparably Efficient Interconnection to Providers of Internet Access Services*, Order, 11 FCC Rcd 6919 (1996). In a series of orders between 1989 and 1992, the Commission approved the BOC's ONA plans. *Id.*

<sup>8</sup> *Phase I Order*, 104 FCC 2d 958, 1068, paras. 221-222 (1986); *BOC ONA Amendment Recon. Order*, 6 FCC Rcd 7646, 7654, para. 13 (1991). See *Computer III Further Remand Proceedings: Bell Operating Company Provision of Advanced Service*, Notice of Proposed Rulemaking, 10 FCC Rcd 8360 (1995).

<sup>9</sup> At that time, BellSouth used four NXX codes on a regional basis to provide ONA-related services in its nine-state region, and BellSouth continues to use NXX code 203 to provide ZipConnect. BellSouth's ONA Plan Amendment at 2. In Florida, BellSouth has 19 ZipConnect customers, with 107 ZipConnect accounts among those customers. Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 88-2 (filed Jul. 18, 2003).

<sup>10</sup> See *Pleading Cycle Established for Comments on BellSouth Open Network Architecture Plan Amendment*, CC Docket No. 88-2, Public Notice, DA 02-3463 (rel. Dec. 13, 2002).

<sup>11</sup> Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 88-2 (filed Feb. 6, 2003) (BellSouth Feb. 6 *Ex Parte* Letter); BellSouth's ONA Plan Amendment at 1-2, 4.

<sup>12</sup> BellSouth's ONA Plan Amendment at 1-2. Common examples of "oddball" NXX codes include 976 codes and specific-use codes such as 911. See Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 88-2 (filed Jan. 24, 2003) (BellSouth Jan. 24 *Ex Parte* Letter), Attach. 1 at 3-4.

<sup>13</sup> BellSouth's ONA Plan Amendment at 2.

duplicate certain “oddball” NXX codes, including 203.<sup>14</sup> NANPA denied these requests.<sup>15</sup> Subsequently, the Florida Commission permitted temporary duplication of certain “oddball” NXX codes, including 203, but required BellSouth to release them back to NANPA, directing BellSouth to return NXX code 203 by July 31, 2003.<sup>16</sup>

4. BellSouth states that a suitable substitute service for ZipConnect is available for affected customers, and that BellSouth account teams have contacted customers to advise them of this substitute service.<sup>17</sup> BellSouth explains that toll-free calling service with the geographic routing feature “can route calls based on States, NPAs, NPA/NXXs or 10-digit ANI,” which is essentially the same functionality that ZipConnect offers.<sup>18</sup> According to BellSouth, a representative account moving from ZipConnect to toll-free service would expect to see essentially the same monthly charges as it did for ZipConnect.<sup>19</sup>

## II. DISCUSSION

5. We grant BellSouth’s amendment to remove ZipConnect from its ONA plan, for Florida. We find that the circumstances of this case justify BellSouth’s requested relief.<sup>20</sup> As mentioned above, decisions by the Florida Commission would appear to compel BellSouth to discontinue ZipConnect in Florida because it relies on NXX code 203, which BellSouth is required to return to NANPA by July 31, 2003.<sup>21</sup> Moreover, returning NXX code 203 to

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<sup>14</sup> *Id.* BellSouth uses NXX code 203 in Florida’s newly-split area codes 904/386 and 561/772. *See* BellSouth Jan. 24 *Ex Parte* Letter, Attach. 1, 2.

<sup>15</sup> BellSouth’s ONA Plan Amendment at 2.

<sup>16</sup> BellSouth’s ONA Plan Amendment at 3; BellSouth Feb. 6 *Ex Parte* Letter. The Florida Commission required BellSouth to return other NXX codes by March 31, 2003. *Id.* These NXX codes were the subject of the *First Memorandum Opinion and Order*.

<sup>17</sup> Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 88-2 (filed Apr. 15, 2003) (BellSouth Apr. 15 *Ex Parte* Letter); BellSouth’s ONA Plan Amendment at 5. Also, in the context of its section 63.71 application, BellSouth notified customers in Florida by letter of its plan to discontinue ZipConnect service in that state. *BellSouth Application for Section 214 Discontinuance* at 2.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *See First Memorandum and Order*, 18 FCC Rcd at 5095, para. 5.

<sup>21</sup> *Cf. Amendments of Part 69 of the Commission’s Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, Memorandum Opinion and Order, 7 FCC Rcd 811, 813, para. 15 (1992) (permitting Bell Atlantic to withhold a service from its ONA plan because the necessary NXX code was available only in two of Bell Atlantic’s states and because compelling Bell Atlantic to provide the service would remove 10,000 numbers from the capacity of each area code).

NANPA should ultimately restore ten thousand numbers to the available pool in each affected area code. Given the small amount of ZipConnect customers,<sup>22</sup> and the large amount of numbers associated with this service, returning the NXX code would serve the public interest by allowing this numbering resource to be used in a more efficient manner. In addition, BellSouth has indicated that a suitable alternative service currently exists that would duplicate the functions of ZipConnect for existing customers of the service, which BellSouth has notified of ZipConnect's proposed removal in Florida.<sup>23</sup> Finally, BellSouth's amendment is unopposed. Notably, we received no comments from ZipConnect customers in Florida, despite their having received notice of the proposed removal of this service. While we do not favor ONA amendments that remove previously-approved services,<sup>24</sup> we conclude that the facts of this case warrant granting BellSouth's amendment. Accordingly, we grant BellSouth's amendment in part, permitting it to remove ZipConnect from its ONA plan for Florida.

### III. ORDERING CLAUSE

6. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i) and (j), 201, 202, 203, 205, 214, and 218 of the Communications Act of 1934, as amended, and sections 0.91 and 0.291 of the Commission's rules, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 202, 203, 205, 214, 218, and 47 C.F.R. §§ 0.91, 0.291, BellSouth's Open Network Architecture Plan amendment IS GRANTED in part, to the extent described above.

FEDERAL COMMUNICATIONS COMMISSION

William F. Maher, Jr.  
Chief, Wireline Competition Bureau

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<sup>22</sup> See *supra*, n.9.

<sup>23</sup> BellSouth Apr. 15 *Ex Parte* Letter.

<sup>24</sup> See *Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, Memorandum Opinion and Order, 7 FCC Rcd 811, para. 1 (1992).